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March 8, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 28, 2004

Case Number: TSO-0155

This Decision concerns the eligibility of xxxxxxxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's suspended access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

The individual was arrested for driving under the influence (DWI) in April of 1995. On July 25, 1995, the individual was arrested for driving with a revoked license. During March 1998, the individual was involved in an automobile accident, and this incident involved an open alcoholic beverage container violation.

During May 1995, March 1998 and June 2003, the Department of Energy (DOE) conducted personnel security interviews (PSI) with the individual. Following the June 2003 PSI, the individual was referred to the DOE consulting psychiatrist for an evaluation. In his report of that evaluation, the DOE consulting psychiatrist found that the individual meets the The American Psychiatric Association's Diagnostic and Statistical Manual, Fourth Edition (DSM-IV) criteria for alcohol dependence and that the individual has not shown adequate evidence of rehabilitation or reformation. DOE consulting psychiatrist's report at 28.

On April 16, 2004, the Manager of the Personnel Security Department, National Nuclear Security Administration (NNSA), Department of Energy (DOE) issued a Notification Letter to the individual. The Notification Letter relies on the DOE consulting psychiatrist's report as the basis for finding an alcohol related security concern under Criterion J. 10 C.F.R. §710.8(j).

In the Notification Letter, the Manager also informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the Notification Letter. The individual requested a hearing in this matter and the NNSA forwarded this request to the Office of Hearings and Appeals. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (hearing).

At the hearing the individual testified on his own behalf, and he presented the testimony of his clinical social worker, his wife, supervisor, a coworker and two relatives. The DOE presented the testimony of the DOE consulting psychiatrist. A summary of the testimony follows.

## II. TESTIMONY

### 1. The Individual

The individual testified that he does not drink excessively and that he is not alcohol dependent. Tr. at 28. He stated that “I used to buy a six-pack of beer, go to the house, maybe drink one for dinner, or two, and then wait a while, another two or three weeks, drink some more.” Tr. at 21. The individual further indicated that his 1995 DWI scared him and since 1995 he has never consumed a full six pack during a twelve hour period. Tr. at 29. The individual testified that he has not consumed any alcohol since May 2004. Tr. at 22.

The individual indicated that he has attended 9 alcoholics anonymous (AA) meetings. Tr. at 38. When asked if he has an AA sponsor he responded “No, I don’t know anything about getting a sponsor and [the clinical social worker] never told me anything about finding a sponsor.” Tr. at 38. He testified that his intention is to not consume alcohol in the future. Tr. at 39.

The individual testified that he has been married to his second wife since 1984 and has never had a marital problem as a result of his consumption of alcohol. Tr. at 24. He has three children from his current marriage and three children from his first marriage. Tr. at 24 & 28. The individual has a large extended family. Within walking distance of his own home there are six residences of relatives and their families. Tr. at 40.

The individual was asked about his interview with the DOE consulting psychiatrist. He indicated that he told the DOE psychiatrist that since 1995 he has on many occasions drunk more than a six pack. Tr. at 36. When asked to explain the discrepancy between his testimony and the information he provided to the DOE consulting psychiatrist he indicated “Well, it’s not that it’s different, it’s just I don’t remember.” Tr. at 36.

### 2. Clinical Social Worker

The clinical social worker testified that he first met with the individual in May 2004. Tr. at 11. He diagnosed the individual as alcohol dependent in remission. Tr. at 12. Between May and August 2004 the individual completed six counseling sessions during which the individual worked on

relapse prevention skills. Tr. at 12.1 The clinical social worker indicated that during those sessions the individual maintained his sobriety, attended AA meetings and talked about obtaining an AA sponsor. Tr. at 12 and 13. The individual told the clinical social worker that he would come back for additional counseling sessions if he were to have a relapse. Tr. at 15.

The clinical social worker indicated his prognosis for the individual.

I believe that he takes this process of sobriety and preventing relapse seriously, and that he's attending AA meetings. You know, we've talked about him finding a sponsor and working the steps. These are all usually good signs in terms of alcoholics deciding to stay sober.

Tr. at 12.

### 3. The Individual's Supervisor

The individual's supervisor testified that he has known the individual since the early 1990's. Tr. at 43. He has never disciplined the individual for alcohol use or for missing work as a result of the use of alcohol. Tr. at 43. He has never seen the individual with a hangover. Tr. 44.

He testified that the individual is a dependable worker who never misses work and is one of the best machine operators. Tr. at 44. The supervisor often gets a road crew together at unusual hours to do urgent road maintenance and the individual is always available to work. The individual is one of the employees that he counts on to be ready, willing and able to work at any time day or night. Tr. at 45.

### 4. The Co-worker

The co-worker testified that he has known the individual for five years. Tr. at 48. On a number of projects he has been the individual's foreman. He testified that the individual is a good employee and very conscientious about safety. The individual is organized in his approach to work and never acts in haste. Tr. 49. The co-worker has worked closed with the individual on many jobs and he has never smelled alcohol or noticed any behavior that would indicate the individual is under the influence of alcohol. Tr. at 48.

### 5. The Individual's Wife

The individual and his wife were married in 1984. Tr. at 52. She testified that when she first met the individual, he drank a six-pack of beer in an evening. Tr. at 52. She testified that when they were first married she and the individual argued about the individual's level of alcohol consumption. Tr. at 55. She believes that the individual's arguments with their children were often caused by his consumption of alcohol. Tr. at 57.

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1 The clinical social worker's notes are included in the record as individual's exhibit #1.

The individual's wife testified that because of the individual's high blood pressure and liver problems, his doctor has advised him to stop consuming alcohol. Tr. at 53. In recent years the individual has reduced his consumption of alcohol. In 2002 and 2003 she indicated the individual drank one or two beers a day. Tr. at 52.

For several years the individual's wife wanted him to stop consuming alcohol. Tr. at 58. She testified that he in May 2004 he totally stopped consuming alcohol. Tr. at 52. There has been no alcohol in their home since May 2004. Tr. at 67 She is very happy that he stopped consuming alcohol. Tr. at 58.

#### 6. The Individual's Niece and Her Husband

A niece of the individual testified that they live very close to the individual and she has known him all of her life. Tr. at 70. She and her husband (the husband) visit the individual's home at least once a month. Tr. at 70. Before May 2004 she saw the individual drink a beer at dinner or two beers at a party, but she never observed him drinking to excess. Tr. at 71. Since May 2004 she has not seen the individual consume any alcohol. Tr. at 71.

The husband testified that he has known the individual for 11 years. Tr. at 73. He agreed with his wife's testimony that they have not seen the individual consumed alcohol since May 2004. In addition to living near the individual, he works closely with him on road maintenance projects. Tr. 73. He has often worked with the individual when they are called to handle emergency road maintenance and he believes the individual is very dedicated to his work. Tr. at 74.

#### 7. The DOE Consulting Psychiatrist

The DOE consulting psychiatrist interviewed the individual on September 12, 2003. He provided the DOE with a written report dated October 25, 2003. DOE Exhibit #3.

In his report and during his testimony the DOE consulting psychiatrist indicated that he believes the individual is alcohol dependent. Tr. at 80. He testified that the individual meets three of the DSM-IV criteria for alcohol dependence. He meets Criterion 3 (alcohol is taken in larger amounts or over a longer period than was intended) on the basis that the individual often drank six beers during a day despite his desire because of the interaction between alcohol and his medications to limit his alcohol consumption to three beers a day. Tr. at 83. Criterion 5 (large amount of time drinking) is satisfied on the basis of the individual's statement that he spends four hours a day consuming alcohol. Tr. at 84. Criterion 7 (alcohol consumption is continued despite medical or psychological problems) is met on the basis of the advice he had received from his physician that his high blood pressure and elevated liver enzymes indicate that he should stop consuming alcohol. Tr. at 90

The consulting psychiatrist testified that he believed that this individual should be considered rehabilitated if he were completely abstinent for one year and received treatment by either participating in six months of a treatment program or by attending 100 AA meetings. He believes

the individual would demonstrate reformation without any treatment if he were completely abstinent for three years. Tr. at 88.

The DOE consulting psychiatrist was asked to comment on the testimony at the hearing. He indicated that testimony that the individual has stopped drinking and that his wife is committed to helping him maintain his sobriety, if true, is a good first step. Tr. at 92. However, he stated that the individual has not demonstrated either the one year of abstinence or the treatment (100 AA meetings or six months participation in a formal treatment program) necessary to demonstrate rehabilitation. Tr. at 108. He further stated that the individual has not met the three years of sobriety necessary for reformation. Tr. at 107.

### III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer. As discussed below, once a security concern has been raised, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the hearing officer to base all findings relevant to his eligibility upon a convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

#### A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting her eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752 (1995).

## B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. §710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

## IV. ANALYSIS

### A. Diagnosis

As discussed below, I have determined that the individual has not resolved the security concern raised by the diagnosis of alcohol dependence. Both the DOE consulting psychiatrist and the clinical social worker testified that the individual is alcohol dependent. Both experts provided a sound and reasonable basis for their diagnosis. The individual indicated in his testimony that he did not agree with the diagnosis of alcohol dependency, because he does not meet the criteria for alcohol dependency and because he consumed less alcohol than he reported to the DOE consulting psychiatrist.

I am not persuaded by the individual's argument that he does not meet the definition of alcohol dependency. The individual testified that "I don't think I've had a problem." Tr. at 28. His basis for that position was that "I did drink, but not as excessively, you know, not overdo it." Tr. at 28. The individual does not have a clear understanding of the term alcohol dependence as used in the DSM-IV. The individual seems to believe that alcohol dependence means that a person is physically dependent or regularly drinks to such an excess that he is often unable to function. As discussed above, the dependent factors involved here are (i) consuming alcohol over longer period than intended, (ii) continuing to consume alcohol despite medical problems and (iii) "a great deal of time spent" consuming alcohol. I agree with the experts that based on DSM-IV criteria and the individual's continued use of alcohol despite the suggestions of his doctor and his wife that he cease consumption, he is properly diagnosed as alcohol dependent.

I also do not believe the individual's statements at the hearing that he actually consumed less alcohol than he reported to the DOE consulting psychiatrist. He told the DOE consulting psychiatrist in September 2003 that he consumed a six-pack during a twelve hour period a couple of times a month. However, at the hearing he testified that he has not consumed a six-pack in a twelve hour period since 1995. Tr. at 36. When asked about the inconsistency he indicated he could not remember how much alcohol he consumed. Tr. at 36. At another point in the hearing he was asked if he told the DOE consulting psychiatrist that he drank about a six-pack a week. He responded "That's about

what I told him. I told him once in a while I drink maybe one six-pack, but once in a long while. But mostly it's a beer here and there." Tr. at 20. I found his wavering and vague testimony regarding his historic use of alcohol to be unpersuasive and it causes me to believe that he was minimizing his historic use. Therefore, I do not accept the individual's position that his level of alcohol consumption was less than he reported to the DOE consulting psychiatrist.

## B. Rehabilitation

In this case, the DOE consulting psychiatrist indicates he believes that rehabilitation could be accomplished with a treatment program and one year of abstinence. Tr. at 108.

I believe the individual has shown that he has substantially reduced his consumption of alcohol since May 2004 and he is in the early stages of committing himself to total abstinence. However, I am not convinced by the evidence presented at the hearing that the individual has been abstinent since May 2004. The primary testimony regarding abstinence was provided by the individual himself. Given the individual's tendency to minimize his alcohol use, I do not believe his testimony that he has not consumed alcohol since May 2004 can be relied upon. However, the testimony of his wife was more believable. She testified openly and candidly and I believed her statement that she has not seen the individual consume alcohol since May 2004. However, it does not satisfy me that the individual has not consumed alcohol out of her presence. The only other corroborating testimony was from the niece. She testified that she has not seen the individual consume alcohol since May 2004. However, her contact with the individual consists only of monthly visits to his home. Thus her testimony was too limited to provide any meaningful picture here of whether the individual has been abstinent.

Ultimately, the individual's selection of witnesses was inadequate to support his position that he has not used alcohol since May 2004. He indicated that there are six homes nearby his own occupied by families of his relatives with whom he socializes on a regular basis. Further the individual has a twenty year old daughter from his current marriage and several 30 year old children from a prior marriage. The individual could have presented the testimony from those individuals as witnesses to corroborate his period of sobriety. The fact that he has not done so may mean that they would not support his account. In any event, the individual has failed to persuade me that he has not consumed alcohol since May 2004.

In any event, even if the individual has not consumed any alcohol since May 2004, I agree with the DOE psychiatrist that seven months of sobriety and 9 AA meeting is not sufficient in this case to demonstrate rehabilitation or reformation.

## V. CONCLUSION

I have concluded that the individual has not mitigated the DOE security concern under Criteria J of 10 C.F.R. § 710.8. In view of the record before me, I am not persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wiekert  
Hearing Officer  
Office of Hearings and Appeals

Date: March 8, 2005